

Parliamentary Joint Committee on Corporations and Financial Services
Australian Securities and Investments Commission
Responses to Questions on Notice from Senator Paterson

Regarding [ASIC's letter to the Real Estate Institute of Australia dated 3 April 2020 on unlicensed financial advice by real estate agents](#):

QoN 001-01 - Unlicensed advice - Stakeholder requests

Prior to sending this letter, did ASIC receive any correspondence from stakeholders requesting action on this matter?

- If so, please provide copies.

Answer

Before we issued our letter dated 3 April 2020 (our letter), an ASIC member of staff initially flagged a letter they had received from their real estate agent about applying for the early release of superannuation funds to meet rental payments, if they were experiencing financial difficulty. ASIC also received one report of misconduct from a member of public raising similar concerns. ASIC's review of twitter had indicated early concerns being identified by tenants of messaging from agents on behalf of landlords.

ASIC is unable to provide copies of the correspondence received by the ASIC staff member or the report of misconduct received from the member of the public as this material was received in confidence.

Further, on 1 April 2020 ASIC received a letter from Mr Stephen Jones MP expressing concern about unqualified financial advice being given by real estate agents that may not be in the best interests of individuals. Enclosed is a copy of the letter from Mr Jones and ASIC's response.

Between 3 April 2020 and 7 April 2020, ASIC received approximately 70 reports of misconduct from members of the public.



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address:
Level 5, 100 Market Street,
SYDNEY NSW 2000

Mail address for Sydney office:
GPO Box 9827,
BRISBANE QLD 4001

Our Reference: CCU-20/0176

www.asic.gov.au

6 April 2020

JAMES R F SHIPTON
CHAIR

Stephen Jones MP
Shadow Assistant Treasurer
Shadow Minister for Financial Services
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Mr Jones

I refer to your correspondence dated 1 April 2020.

Thank you for sharing your concerns in relation to real estate agents providing unlicensed and/or inappropriate financial advice to tenants about accessing superannuation early to pay their rent.

ASIC values all intelligence that we receive, and I thank you for the information that you have provided. [This is a matter that came to our attention via a significant number of complaints from interested parties, including a number of consumer groups.]

ASIC shares the concerns you have raised, and I have set out ASIC's response below.

Unlicensed advice by real estate agents

ASIC has issued a media release and has sent a letter to the real estate institutes in each state warning against unlicensed financial advice by real estate agents to tenants.

I *attach* a copy of the letter to the real estate institutes for your information. Some of our senior staff have also conducted radio interviews on the subject, warning both tenants and agents of the matter.

ASIC has made it very clear that it will be monitoring this situation closely, and if contraventions of the licensing requirements of the Corporations Act are found, ASIC will not hesitate to act swiftly to protect vulnerable consumers.

Accessing quality information and advice

It is essential that Australian consumers can access good quality information and advice at this time.

To assist consumers in relation to the Government's recent decision to allow individuals affected by COVID-19 to access their superannuation early, ASIC's MoneySmart

website is being updated to provide independent and reliable information to consumers. ASIC is developing this content in conjunction with the ATO.

In addition to working with the ATO, ASIC is also working closely with the superannuation, financial advice and accounting industry associations. We are in advanced discussions about some relief we may give superannuation funds, financial advisers and registered tax agents to enable them to provide free or low-cost advice to consumers about whether to access their superannuation early.

I trust this letter is of assistance and please don't hesitate to reach out if you would like any further information

Yours sincerely

JAMES SHIPTON

CHAIR

Encl.

No images? [Click here](#)



ASIC
Australian Securities &
Investments Commission

Media Release

The following information has been released by the Australian Securities and Investments Commission (ASIC):

Unlicensed financial advice by real estate agents to tenants

ASIC has written a letter to the real estate institutes in each state outlining concerns about some real estate agents who are advising tenants to apply for early release of their superannuation.

View the letter [here](#).

Please do not respond to this email. All media enquiries can be directed to the ASIC Media Unit by email at media.unit@asic.gov.au

*General enquiries should be directed to ASIC's Customer Contact Centre on **1300 300 630**.*

For copies of all media releases, please visit the [ASIC News Centre](#).

Follow us on Twitter: [@asicmedia](#)

Follow us on Twitter: [@asicmedia](#)

[Preferences](#) | [Unsubscribe](#)



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel:

Fax:

www.asic.gov.au

3 April 2020

Dear "[Real Estate Institute]"

Unlicensed financial advice by real estate agents to tenants

ASIC is aware that some real estate agents are advising tenants who are unable to pay their rent, or who may find themselves in such a situation in future, to consider applying for early release of their superannuation. Recent media reports and social media commentary outlining this conduct by some real estate agents is of significant concern to ASIC and, we would hope, you.

As you are no doubt aware, as part of the Federal Government's COVID-19 economic response package, the Australian Tax Office (ATO) has announced it will implement a measure to allow individuals affected by COVID-19 to access their superannuation early, up to \$10,000 in 2019-2020 and a further \$10,000 in 2020-2021.

ASIC's concerns

We are concerned that the conduct by real estate agents referred to above may:

- constitute unlicensed financial advice in contravention of section 911A of the *Corporations Act*; or
- not be in the best interests of individuals in contravention of section 961B of the *Corporations Act*.

Financial advice must only be provided by qualified and licensed financial advisers, or financial counsellors, not by real estate agents who neither hold the requisite licence, nor are an authorised representative of an Australian Financial Services Licensee.

The Corporations Act imposes significant penalties for a contravention of section 911A. For individuals this can be a maximum of 5 years imprisonment, and/or a fine of up to \$126,000 (600 penalty units), and for corporations a fine of up to \$1,260 million dollars (6000 penalty units).

Tenants facing financial difficulty need sound financial guidance and potentially debt counselling. Specifically pointing them to and recommending them to consider the specific possibility of accessing superannuation is, again, likely to amount to a breach of the Act.

ASIC seeks your assistance in communicating with your members

We request that you please circulate this correspondence to your members as a matter of priority. We will be raising these concerns with the relevant state regulatory bodies and will be writing directly to firms where it is alleged or brought to our attention that they have breached the law (as discussed below).

ASIC intends to monitor this situation closely, and if contraventions of the licensing requirements of the Corporations Act are found, ASIC will not hesitate to act swiftly to protect vulnerable consumers.

If real estate agents are of the view that they need to give guidance to a tenant regarding their financial affairs, they should consider referring tenants to information available on the ASIC [MoneySMART](http://www.moneySMART.gov.au) website (www.moneySMART.gov.au).

If you have any questions in relation to this correspondence, please contact Brendan Facey, Senior Executive Leader – Misconduct & Breach Reporting at brendan.facey@asic.gov.au.

Yours sincerely

Tim Mullaly
Executive Director – Financial Service Enforcement
Australian Securities & Investments Commission



Shadow Assistant Treasurer
Shadow Minister for Financial Services

Mr James Shipton
Commissioner
Australian Securities and Investment Commission
By email:

CC: Joanna Bird
By email:

1 April 2020

Dear Mr Shipton

I write to you to raise our concerns about unqualified financial advice being given by real estate agents.

There are now widespread media reports of real estate agents advising tenants to access their superannuation funds if they are facing difficulty in paying their rent. We have received copies of some of these communications.

We are concerned that this advice may not be in the best interest of individuals.

Early access to super should be a last resort and for most it will have a disproportionate impact on their retirement savings.

Renters should be able to make these decisions on the basis of full knowledge of the options available and the new protections from eviction that have been established by most state Governments. Financial advice should only be provided from qualified advisers and financial counsellors, not their real estate agent.

We ask you to consider issuing a warning on this matter.

Australians who find themselves in a difficult financial position should be able to make these difficult decisions based on financial advice that is in their own best interests and free from the conflicted interests of other agents.

Sincerely

Stephen Jones MP
Shadow Assistant Treasurer
Shadow Minister for Financial Services